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Dicta Observes

A committee of The Denver Bar Association on Modern Crime Developments and Criminal Justice has been appointed by President Arnold. The personnel is as follows:

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HIGHER STANDARDS FOR ADMISSION

Another step forward in the Pennsylvania plan which attempted to weed out applicants to the bar in the very inception of their careers was made at a meeting of the Pennsylvania Bar Association held in June. The association adopted a proposal that a six months' clerkship be served following admission to the bar. At the present time the clerkship can be served at any time before admission, but the regulation now requires that the clerkship be served the six months immediately after admission. At the same meeting a quota system of limitation for admissions was considered, but the Association did not adopt this proposal.

UNAUTHORIZED PRACTICE OF LAW

(By the Editor-in-Chief)

THE practice of unlicensed persons of using the inferior courts of this state in furtherance of their business of collecting accounts, instituting replevin actions, suits in forcible entry and detainer and, in some cases, tort actions, continues unabated. A complaint against such practice was filed during the past year with the Committee on Grievances of the Colorado Bar Association and a hearing was had thereon, with the result that the commttee submitted to the Supreme Court a draft of a proposed rule to control such practice. The Supreme Court recently referred to its Standing Rules Committee, composed of Mr. George P. Steele, Chairman, Judge Charles C. Sackmann, Judge George A. Luxford, Judge H. E. Munson, Mr. Ralph L. Carr, Mr. Merle D. Vincent and Mr. Fred C. Storrer, the proposed rule which is as follows:

"No person not an attorney of this court shall, as a general practice and for compensation, represent others in actions in justice of the peace courts."

Thereupon Mr. Steele, in considering whether or not the objectionable practice can be controlled by a rule in that regard, submitted several questions to the members of his committee, and to the writer, who has kept in touch with the activities in different states of various bar associations for the purpose of curbing lay encroachment, and it is the writer's opinion that ample authority exists not only through the inherent power of the Supreme Court to regulate and control, but also through a proper interpretation of the licensing statutes of this state. Three questions were submitted by Mr. Steele, as follows:

"First: Since a justice of the peace court is not a court of record, has the Supreme Court authority to adopt the rule proposed in view of the language of Section 2 of Article VI of the Constitution? Perhaps more specifically this inquiry depends upon what meaning should be attributed to the word 'under' in the phrase of Section 2, which reads:

"* * * and shall have a general superintending control over all inferior courts, *under* such regulations and limitations as may be prescribed by law."

"Second: Has the Supreme Court authority to control persons not members of the bar representing litigants in justice of the peace courts?"

These two queries are so closely related that they may be considered and answered together.

The defense of the layman for his practice in inferior courts is that the legislators intended first, to license an individual as a condition prerequisite to practicing law, and second, to confine to courts of record any penalty for unlawful practice.

He has construed Section 6017, C. L. 1921, the penalty statute, as not reaching him for the reason that that part thereof which reads as follows:

"That any person who shall without having license from the Supreme Court of this state so to do, advertise, represent or hold himself out in any manner as an attorney. * * *"

necessarily implies that he must have a sign "Attorney at Law" on his office door, or list his name in telephone and city directories as an attorney, advertise by card, legal directory or otherwise that he is an attorney, or make statements from time to time in the presence of the public that he is an attorney; that if he does not do any of these things, he is free to practice law in the inferior courts in view of the language of the second portion of Section 6017, to-wit:

"That any person who shall without having a license from the Supreme Court of this state so to do * * * appear in any *court of record* in this state to conduct a suit, action, proceeding, or cause for another person * * *."

With equal speciousness it might be argued that because of the use of the words "courts of record" in Section 5997, the license therein provided for confines the attorney to practice in such courts only, because the language (the phrase being in the conjunctive) reads:

"* * * which license shall constitute the person receiving the same an attorney and counselor at law, and shall authorize him to appear in all courts of record in this state, and *there* to practice * * *."

It has often been held that the constitutional grant of judicial powers to the courts is complete and all-inclusive. The following quotations aptly illustrate this point, to-wit:

"The grant of judicial power to the department created for the purpose of exercising it (the courts) must be regarded as an exclusive grant covering the whole power (In re Day, 181 Ill. 73), and 'leaving no residuum' (Telephone Co. vs. Bank, 74 Ill. 217)."

Since the grant of judicial power to the courts is an exclusive grant, it follows that, if the doing of any act which constitutes the practice of law is the exercise of a judicial function, the person doing such act is under the jurisdiction of the courts, and not of the legislature.

The questions above raised are clearly and fully covered in the language of the court in re: Opinion of the Justices (Mass., 1932), 180 N. E. 725, 81 A. L. R. 1059, in which the definite statement is made that:

"No statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law."

In this case there was a bill pending before the Massachusetts Senate to regulate the correction of answers to bar examination questions and, apparently, the legislators felt that grave doubt existed as to whether the enactment of such a bill properly lay within the legislative province, and an inquiry was submitted to the Supreme Court of the State of Massachusetts which asked, among other things, to what extent was the admission of candidates to the office of attorney at law subject to regulation and control of the General Court.

Briefly, the opinion of the justices in the above case states that statutes respecting admission to the bar were valid where they did not infringe on the right of the judicial department to determine who should practice in the courts, and that, so far as they prescribed qualifications of applicants for admission, they would be regarded as fixing a minimum and not as setting bounds beyond which the judicial department could not go, but that the legislature could not control the judicial department in deciding who should enjoy the privilege of practicing law.

Conceding for the moment that there may be in Section 2, Article 6, of our Constitution, either in terms or by implication, an indication of a suggested legislative leash on the "general superintending control" over all inferior courts, there is no statute of the State of Colorado which, in terms or by

implication, can possibly be construed as a limitation upon the Supreme Court in any way if it hereafter should lay down its positive mandate that no person shall practice law in the inferior courts of this state unless first licensed as an attorney.

The most that can be urged as indicating legislative control in the Colorado statutes, as contained in Chapter 133 entitled "Attorney at Law," is that two sections thereof, 5997 and 6017, contain the above-quoted awkward references to courts of record (which might be termed repugnant provisions), which have been used as above suggested by proponents of unlicensed practice as argument that thereby the hands of the Supreme Court are tied in any attempt to control the inferior courts. That argument falls flat, however, upon considering the general rule of statutory construction, namely, that all statutes upon the same subject must be considered and construed together, and any repugnant provisions must be rejected, if possible, in an effort to establish the intent of the legislature and to give effect to the probable scope and purpose for which the statutes were enacted.

Certainly, such "general superintending control" should not be deemed circumscribed by mere implication, and the rule should be that when one construction of Section 6017 would tend to tie the hands of the Supreme Court, and thereby limit its inherent power of control, and the other would not, the latter should prevail.

In "re Opinion of Justices," supra, the court states that the government of the commonwealth is divided into three departments, and it is provided that:

"The legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them;"

In Kolkman vs. People, 89 Colo. at page 74, the following quotation is of interest:

"No person or collection of persons charged with the exercise of powers properly belonging to one of these departments (legislative, executive and judicial), shall exercise any power properly belonging to either of the others." Art. 3, Colorado Constitution.

"The Supreme Court * * * shall have a general superintending control over all inferior courts. * * * True, said control is to be

exercised 'under such regulations and limitations as may be prescribed by law.' Id. But since the two articles must be construed together the 'law' referred to must not usurp judicial powers. * * *"

There are no other repugnant provisions in the sections composing Chapter 133, and the broadest construction that can be given that part of Section 6017, which refers to courts of record, is that it may operate to prevent imposition of a penalty for unlicensed practice in inferior courts, but *only* until such time as a statute may be enacted, or the Supreme Court may rule, that it shall be unlawful for an unlicensed person so to practice.

In further aid of statutory construction in considering words of doubtful import used in the body of the statute, consideration of the title is material, and the contempt statute is entitled:

"An Act to Provide for the Punishment of One Guilty of *Practicing Law* without a license."

The language of the two ambiguous sections, if they are ambiguous, is in the disjunctive. Therefore, it is consistent with the intent of the legislators, in reading the statutes as a whole, together with the title of the act, to construe Section 5997 to read:

"No person shall hereafter be permitted to practice as an attorney or counselor at law * * * without having previously obtained a license for that purpose * * *."

and to read Section 6017, as interpreting the intent of the legislators to penalize *all* unauthorized practice, as both prohibitory clauses therein are in the disjunctive:

"That any person who shall, without having a license from the Supreme Court of this state so to do, advertise, represent or hold himself out *in any manner* as an attorney * * *."

A further consideration of the statutes shows that in *none* of the other sections is any court designated or referred to.

Section 6000 provides that:

"No person (except as provided in Section 1) shall be entitled to receive a license to practice as an attorney and counselor at law * * *."

The exception above-noted is apparently meaningless, as Section 1, which is the same as 5997, contains nothing by way of exception.

Section 6007 provides that:

"No person whose name is not subscribed to or written on the said roll * * * shall be suffered or admitted to practice as an attorney or counselor at law within this state * * * *anything in this act to the contrary notwithstanding* * * *."

What reason did the legislature have for emphasizing: "anything in this act to the contrary notwithstanding" except to prohibit the practice of law at all until the statutes respecting admission were fully satisfied?

Section 6015 provides that:

"No person shall be permitted to enter his name on the roll, or do any official act appertaining to the office of attorney or counselor at law, until * * *."

Section 6016 provides for:

"* * * recovery back from any person not licensed as aforesaid who shall receive any money * * * property as a fee or compensation for services rendered * * * as an attorney * * * within this state."

In all of the foregoing there is no inference to be drawn that, on the contrary, it *will* be lawful for an unlicensed person to practice law in the inferior courts, in which connection it will not seriously be contended that the unlicensed individual who appears in an inferior court and does every act therein from making out and filing pleadings, thereafter trying the issues or taking a default judgment, and following up judgment by issuing execution thereon or garnishment or attachment summons, or prosecuting an appeal to a higher court is *not* practicing law, or holding himself out in any manner, or rendering services as, or doing an official act appertaining to the office of, an attorney or counselor at law.

It has heretofore been admitted by an unlicensed practitioner in our inferior courts that his conduct therein, as above detailed, would constitute the practice of law if pursued in a court of record, but that he felt free so to act in an inferior court because his interpretation of Section 6017, namely, that part thereof which reads:

"That any person who shall without having a license from the Supreme Court of this state so to do * * * appear in any *court of record* in this state to conduct a suit, action, proceeding or cause for another person * * *."

is that the same is a limitation upon the power of the Supreme Court to discipline him, or any other unlicensed person, who appears in the inferior courts.

What constitutes the practice of law generally has been decided within the last two years in a number of decisions of the courts of other states, and in legislation passed defining the same. Such suits as have been filed have been brought against corporations, collection agencies and individuals for unauthorized practice of law, in inferior courts as well as courts of record, and generally the decisions hold that the practice of law is not confined to practice in the courts but is of larger scope, including the preparation of pleadings and other papers incident to any action or special proceedings in any court or other judicial body; the preparation of all instruments whereby a legal right is secured; the giving of legal advice in any action taken for others in any matter connected with the law; the preparation of necessary papers, filing and conducting suits, and endeavoring to enforce judgments by proceedings in aid of execution; whoever, as a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with either of whom, as in privity or in the relation of employer and employee in the ordinary sense, is practicing law.

The question of control of persons not members of the bar would seem to have been settled by the Court's interpretation of the licensing statutes, as laid down in People vs. Taylor, 56 Colo. 441, in which (although being a matter affecting a court of record) the court says, among other things:

"* * * This court has adopted rules providing for a committee of law examiners. * * * These rules are in effect an order of this court that no person shall practice law in this state except upon a compliance with such rules and the laws governing the admission of attorneys."

The third question raised is:

"Third: Assuming ample authority in the premises, would the suggested rule be (a) practicable, or (b) expedient, and if practicable and expedient, then (c) necessary elsewhere than in Denver?"

The wisdom, expediency and practicability and the absolute necessity of construing our licensing statutes to include all courts of this state

"in the exercise of the police power to protect the public from those lacking in ability, falling short in learning, or deficient in moral qualities * * *." (In re: Opinion of The Justices, supra),

becomes more apparent and of greater urgency than ever when it is shown that there are in the United States 160,000 licensed attorneys, with 40,000 students in the law schools, and that there is an average admission per year of 9,500 who enter the practice of law. Out of that mass the element of human frailty will claim many who will be amenable to discipline and for whose derelictions the public will in some measure have redress. Why, therefore, complicate the situation by permitting the practice in inferior courts of the rapidly-growing numbers of unlicensed, uneducated and unqualified individuals, against whose sins of omission or commission, and ignorance, the public has no redress and for which the qualified attorney eventually suffers to a certain extent.

The license to practice law, as provided by Chapter 133, is full and complete and extends to all courts: so should be construed the prohibition against unauthorized practice. No sound distinction can be drawn between the power to admit to practice in all courts and the power to prohibit unlicensed practice therein.

There should not be permitted to continue in this state any condition or situation which challenges the authority of the Supreme Court to regulate and control *all* the courts of the state. It is a peculiar situation, indeed, where the interests of litigants may be entrusted to licensed attorneys who have taken the required courses of study in law schools and colleges and, because of such previous education, possess the mental capacity to pass rigid examinations, and also have the other qualifications necessary to secure a license, among which is the highly important requisite of good morals, whereas on the other hand the same interests in the inferior courts are at the mercy of the layman-practitioner who need not and frequently does not possess any such capacity, requirements or qualifications.

The interests of the public are the same elsewhere as in Denver. If abuses due to unauthorized practice arise and exist in the inferior courts in Denver, it is safe to assume that they will creep into and exist in all inferior courts throughout the

state, and the public is entitled to full and complete protection at the situs of any court.

Expedience and practicability become a necessity in view of the constant encroachment of the ever-increasing multitude of alleged collection agencies and associations represented by laymen-practitioners, which use the practice of law as a business and thereby place it on a level with a grocery, department store, or manufacturing establishment—in complete disregard of the fact that the law is a profession.

The collection associations frequently are owned by stockholders and are profit-seeking organizations. Their existence depends upon the retention of at least one-half of the debts, accounts, etc., upon which they file actions in the inferior courts, or an agreement to collect the same upon an equally high percentage basis. Their interest, as well as the interest of the layman-practitioner, is wholly financial. Such an interest on the part of the practitioner was recognized by the early lawmakers as subversive to the client and as tending to destroy the high standards of ethics and morals required of the solicitor, and the law of champerty and maintenance came into existence. Still, in Colorado the inferior courts are overrun with uneducated, unqualified, unlicensed laymen-practitioners having not the slightest professional interest in the matter in court, but whose sole concern is the personal financial prize in the offing.

The answer to the questions raised, in my opinion, is that when the license authorizes the practice of law in all courts, the prohibition against unauthorized practice should cover the same field. The Supreme Court heretofore, by rule 83c, has barred from practice in Justice of the Peace court, or other courts, disbarred attorneys, and persons whose applications have been rejected through failure to show good character, and by rule 83d it has forbade the practice in probate by unlicensed persons. The writer believes that in the rule proposed the phrase "as a general practice and for compensation," will raise a never-ending controversy over what constitutes "general practice," and I believe the evil above complained of can be controlled by a rule similar to 83d, namely, that

"The present rules prohibiting the practice of law by those not thereto licensed hereafter shall include practice in all inferior courts."

HOME OWNERS' LOAN ACT OF 1933

By SENATOR IRA L. QUIAT

ON June 13, 1933, the Home Owners' Loan Act of 1933 became effective and the United States Government found itself about to engage in the home mortgage business.

This act is purely a relief measure. The Government does not intend to enter into competition with building and loan associations, banks, mortgage companies or with parties who have been and still are making secured loans on homes.

With the crash of 1929 and the resulting depression thereafter the earning power of the home owner was materially reduced and in some cases entirely destroyed, consequently payments to banks, building and loan associations, mortgage companies and other loan agencies were greatly reduced and these companies began to find themselves in difficulties.

A mortgage on a home is not a liquid asset, therefore foreclosures of homes necessarily followed and gradually increased until a tremendous percentage of the home owners in this country were actually being foreclosed and were being put out of their homes. Banks began to fail, building and loan associations were thrown into the hands of receivers and this aggravated the situation. A bank being liquidated could grant no extension to mortgages that became due. The receiver of a building and loan association demanded payment of the mortgage because the assets of the distressed institution had to be turned into cash as soon as possible. To relieve this condition Congress enacted the Home Owners' Loan Act solely with the idea of saving and aiding its distressed citizens whose homes had been or were about to be foreclosed, and the purpose of this law and the powers granted to the Home Loan Corporation are limited to relieving home owners who within the last two years have lost or who are in danger of losing their homes under foreclosure of a mortgage or lien which was of record at the time this law went into effect on June 13, 1933. The Government created a corpora-

tion styling it the "Home Owners' Loan Corporation." There were objections to the Government itself directly going into this venture, such as that the United States can not be sued, the business of lending money is not a governmental function, and other objections which I need not detail here. Therefore the Government by law established this corporation.

The law expressly states that this corporation shall be an instrumentality of the United States. It is a branch of the Government. Actually, it is the United States itself that is running this business. There is no person, no private corporation, no bank, no building and loan association, or any private party in any way interested in this corporation. The Government is the sole stockholder, having purchased two hundred million dollars' worth of its stock, the entire capitalization being authorized by law.

The directors of the Home Owners' Loan Corporation are the same men who are designated by law to be the board in charge of the Federal Home Loan Bank. In addition to the two hundred million in cash subscribed by the Government, the corporation is empowered to issue two billion dollars worth of bonds, which bonds I will discuss later.

The question naturally presents itself: What does the word "home" mean in this act, and the answer is, it means just exactly what the word "home" means in its usual and ordinary sense. The residence, the building or structure which the citizen owns and occupies as a domicile. Its use need not be entirely confined to the purposes of a residence. An incidental use will not destroy the home feature. It may have a little store or some other vocational use. The fact that there is some acreage included, used for gardening or other similar purpose, does not destroy its status as a home, but a residence situated on 160 acres is not a home, for the main purpose of the premises is farming, and therefore in such case, application for relief should be made to the Farm Loan Bank, and not to the Home Owners' Loan Corporation.

A place is still a home even though it is occupied by more than one family, but it must not accommodate more than four families. In other words, an apartment house or terrace having more than four apartments is not within the purview of the law and the corporation can do nothing to relieve under such circumstances.

The corporation is empowered to make loans which are divided into three classifications.

The first class is the kind of loan where bonds are used in payment of, or in exchange for, a mortgage. The mortgage must not exceed 80% of the present value of the home. The present value will be determined by appraisers. The corporation will employ competent appraisers who will carefully examine and determine the present valuation of the home. The valuation will not be determined by the present sluggish conditions of the real estate market. The corporation intends to be liberal, but must be safe. It realizes that at the present time it is difficult, if not almost impossible, to sell the average home. It will attempt to determine present day values; it will take into consideration the high values of 1927, 1928 and 1929 and make a reasonable reduction thereon for the depreciation in values which have occurred. It will compute the present replacement cost. It will calculate the value of the premises, based on a reasonable rental value of the property. From these three figures an average will be determined and that probably will be the appraised value.

We will assume that you own a home which is worth ten thousand dollars at the present appraisal. There is a mortgage on it not to exceed eight thousand dollars—it can not be more than 80% of the appraised value. The corporation will exchange $8,000 of its bonds for the $8,000 mortgage, unless the mortgagee is willing to accept less than the $8,000, then of course the Government would pay less, and the home owner would get the credit. The old mortgage will then be extended or a new mortgage executed.

All of the mortgages to the corporation, whether in this classification or not, require monthly payments which will discharge and pay off the mortgage within fifteen years. The privilege is given to make any payment at any time, and interest is only charged on unpaid balances. In exceptional cases the corporation will permit the payments to be made quarterly, semi-annually or annually, but it prefers that the payments of principal and interest be made monthly. The amount of the payment will be the computed sum which will, within fifteen years, amortize principal and interest. For instance, under this class of loan, $7.91 per month will, within fifteen years, pay off a principal sum of $1,000 and the interest thereon. The payments will first be applied to the interest due and the balance will be credited on principal. The interest which this kind of a loan will bear will be 5% per annum. If, at the time of making the loan it appears that there are unpaid taxes or assessments, the corporation is authorized to advance the necessary sum or sums to pay off such taxes, and to also advance such sums as may be needed for necessary maintenance and necessary repairs, which sums so advanced will be included as a part of the mortgage, provided the total amount does not exceed 80% of the appraised value of the property.

Under the terms of the note and mortgage the mortgagor need not make any payments on account of principal during the first three years. The appraised valuation of the home must not exceed twenty thousand dollars and in no case can the amount of the new Government loan exceed $14,000.

The second kind of loan that this corporation is empowered to make, is where the property is clear and there is no mortgage against it, but there are unpaid taxes or assessments or necessary maintenance or necessary repairs required. To take care of any one or more of these items the corporation will loan upon such home not to exceed 50% of its appraised value. The loan is to be paid back within fifteen years in the same manner as the first kind of loan and the interest is also 5% per annum. It must be borne in mind that the corporation will not make new loans on unincumbered property for any other purpose. It may be vital to purchase a new car or

to pay doctor bills or other indebtedness, but this corporation has not the power to loan money for such purposes.

By the term "necessary maintenance and necessary repairs" is meant expenses which are necessary to preserve and maintain the property. No funds will be loaned to build a new addition or for betterment of the premises. The money must be used for "repairs."

The third kind of loan that this corporation is authorized to make is where a home owner is threatened with foreclosure and the mortgagee will not accept bonds. In such event it is the duty of the local representatives of the corporation to endeavor to obtain a new loan from some private party. If this cannot be done the corporation is empowered to advance the necessary cash to take up such mortgage provided the total amount of the advancement by the corporation, for the mortgage and for repairs and for taxes and assessments does not exceed the total of 40% of the appraised valuation of such home. In other words, if the $10,000 home has a mortgage in excess of $4,000, nothing can be done by this corporation to relieve the home owner. If, however, the corporation is not required to make an outlay in cash of more than $4,000, it may make such a loan. The distinct feature of this loan, however, is that it cannot be made by the local representatives of the corporation. It must be submitted to Washington and approved there. This class of loan is also payable in fifteen years in the same manner and method as the other loans with this exception, that the interest will be 6% per annum instead of 5%.

We next come to the bonds which are to be issued, a great deal of doubt concerning which exists in the minds of the public due to inaccurate statements scattered broadcast. In my opinion there is no reason why mortgagees should not accept these bonds without question, and I believe that within a year or two these bonds actually will be selling above par. Under the provisions of the law the bonds are to be payable within eighteen years. They are to bear interest at the rate of 4% per annum. The United States has guaranteed the interest on the bonds, but not the principal. Instead of this guarantee as to interest being considered as an asset, a great many people seem to single out the guarantee as to interest as

a cloud on the likelihood of the principal being paid. The fallacy of such reasoning is manifest when the purpose of this guarantee is known. Why did the Government guarantee the interest? Because this is a relief measure. No payments are required on principal during the first three years. The corporation is even empowered to extend the time of payment of interest in exceptional cases. It is therefore probable that the corporation will not realize sufficient money during the first three years to pay all of the interest on these bonds, especially when the fact is taken into consideration that the corporation will immediately start to set up sinking funds to take care of the various requirements and to meet the principal of the bonds when they become due. It is apparent that there will be a shortage of funds in the hands of the corporation during the first three years to pay interest. The United States Government therefore said: "I will guarantee you that the interest will be paid."

Had this guarantee never been made, the bonds of this corporation would be considered like the bonds of any other corporation or political entity and the value of the bonds would be determined by what was back of them.

We will assume a new improvement district is created in the City and County of Denver. Bonds are issued to pave the streets, to install sewers or for some other public betterment. Does the city guarantee the bonds of such improvement district? It does not, yet these bonds are sold at par and above par without a question and without a doubt, because the assessed valuation of the district is sufficient to insure the payment. In buying bonds of such district, the investor looks to the value of the assets in back of these bonds.

The same test should be applied in determining the value and safeness of the investment in the bonds of the Home Owners' Loan Corporation.

What is in back of the Home Loan Corporation? First, two hundred million in cash, subscribed by the Government. The Government is merely a stockholder and the bonds are therefore superior to the Government's rights as a stockholder. This two hundred million dollars will be earning interest at 5% and 6% per annum. The corporation will also be mak-

ing 1% profit on the bonds that it has issued, for the mortgages bear interest at 5% and the bonds only pay 4%.

There is no question that the two hundred million dollars, and the ten to twelve million dollars which it will earn annually, the two billion dollars worth of mortgages taken for bonds, and the twenty million dollars which the Government will yearly earn on them, will furnish ample funds and assets to discharge and pay every bond in full. Another thing which will help establish the value of the bonds and keep them at par or close to par is the fact that under the law these bonds may be used and will be accepted by the corporation, at par, in payment of any mortgage or part thereof which the corporation holds.

I do not predict that these bonds will sell at par at once. Liberty bonds, if you will recall, dropped as low as 87 and 88. It is natural to expect that there will be a deliberate attempt on the part of certain financial cliques and groups to force the price of these bonds down so that they may be purchased at a discount and after they have all the bonds they desire, the price will naturally go up until it reaches par and perhaps a figure above par. The bondholder should not be anxious to dispose of his bonds at once.

Under the terms of the Glass-Stegall bill, the Federal Reserve banks may purchase and hold the Home Loan bonds without any restriction and may accept them by way of discount to the same extent as it is permitted to handle Liberty bonds, the Federal Farm Loan bonds and the other bonds of Government instrumentalities.

I have pointed out heretofore that a distressed bank or a building and loan association sometimes has difficulty in converting into liquidated assets their real estate mortgages. No such difficulty will be presented if they exchange those mortgages for bonds.

There are other provisions in the act such as the creation of Federal Savings and Loan Associations, but I will not discuss them here, for the sole object of this talk was to bring to you the picture of the powers and activities of the Home Loan Corporation insofar as it is empowered to relieve and help the distressed home owner in refinancing the mortgage on his home.

Dictaphun

SENSE OF POWER DECREASES MODESTY AND PROMOTES TEMERITY

The masthead, and whata masthead, of DICTA discloses that the newly-elected president has made Roy O. Samson Editor-in-Chief, and placed quondam-editor Louis A. Hellerstein in the position of Adviser. Lou apparently only outranks the Historian, for it will be observed that Trial Court Decisions (if any) and Dictaphun (naturally) are his superiors. A close student of the subject will also note that Wm. H. Robinson, Jr., Associate Editor, and connected, prior to his discharge, with our contemporary, *The Rocky Mountain Law Review,* is considered better than the Adviser, while on the other hand, Sydney H. Grossman, hitherto, and during the time the Adviser was Editor-in-Chief, thought to be single-handed the best business manager ever employed without compensation, is now aided by the Portia section in the obtaining of beer ads and other stimuli of the new deal.

However! Dictaphun for July, 1933—10 DICTA 267—is found upon these pages of that volume: 267, 268, and 282. Interspersed amidst our sparkling jest and merry turn we find an article by Charles J. Kelly, Esq., entitled "Bar Picnic" and an opinion of the Supreme Court. While we would be the last to deny that an opinion of the Supreme Court lacks humor and first to insist that Mr. Kelly is not Irish for nothing, we desire to impress upon the Editor-in-Chief that we are conducting a column. The broken column is fitting in the cemetery, but when we write a column it is a whole column. We would have said a whole column or nothing, but that would be too good an opening.

Hence! The Editor-in-Chief, his Associate, his Adviser, and all to whom these presents come, including the current printer of DICTA (we change from time to time for the usual reason), will please take notice that it gravels Dictaphun like hell to have our carefully sustained climaxes, which bound from quip to quip, distributed throughout the pages. We realize that it sustains the reader interest to do so, but we are in this game for art's sake alone.

BAD? IT MUST BE TERRIBLE!

"A complaint is bad where it is such that the wisdom of Solomon accentuated by the legal lore of Coke and Mansfield could not devise a judgment which it would support." Wilson v. Thompson (Idaho 186), 43 Pac. Rep. 557, per Huston, J.

WHAT MAKES YOU THINK JUDGE STARKWEATHER IS NOT CAREFREE THE OTHER FIFTY WEEKS?

Major John B. Goodman, Jr., on July 11, sought to enlist the services of Hon. H. E. Munson, of Sterling, to sit in the Denver District Court. Judge Munson replied on July 13 as follows:

"Yours of the 11th duly received. I will be with you on the 24th of this month and until the 5th of August. Tell Judge Starkweather to be perfectly carefree so far as his two weeks of the district court of your county is concerned.

"Now as to your doing anything up there that would make things more pleasant, comfortable, convenient or attractive, will say that I am not very much accustomed to conveniences, and could not think of anything that I would rather do than hold court up there during July and August. I am something like one of the parishioners in a colored peoples' church. They were dedicating this colored man's church, and the parson arose and said: 'This certainly am a fine edifice. I don't know of anything that could be added that would make things more pleasant or convenient unless, perhaps, it was the placing of a cuspidor down there at the end of the hall,' when one of the parishioners arose and said: 'Parson, Mr. Jones, a faithful worker in this church, has never held any office yet, and I move you that he be made that cuspidor.'

"So, sitting in that beautiful new courthouse, with MacArthur for bailiff and Harry Watt for reporter, I could not think of a thing to add to the ensemble unless, perhaps, it would be to make Harry Osborne the cuspidor."

HIS HONOR GOES TO PRESS

Squire Henry A. Lindsley presides in Justice Court No. 1, the one nearest Colfax. He sits, these torrid afternoons, in one of the beautiful, substantial and unventilated judge's chairs bought at great expense with unclaimed funds of litigants. On several occasions the Squire said that the chair was reminiscent of those supplied murderers condemned to electrocution. The hot seat, y'know. Well, sir, the other day the Squire decided that if he would supplement the leathern bottom of that chair with a newspaper it would enable him more nearly to keep his mind on the cases before him. So he installed the newspaper and held court for some hours.

It had, of course, been a hot afternoon. The Squire had been wearing his white linen suit. When he arose and left the bench it was wrinkled except in one spot.* And on that spot, from that newspaper, only backwards of course, was a quotation about justice. Well, sir, you just ought to hear the Squire tell it.

*B. C. Our purist wants to know: "Who's your little bench-wrinkler?"

FROM OHIO

In the Ohio State Bar Report this year there appeared a condensation of Frances Wayne's interview with Mary Lathrop, pioneer woman lawyer of the Denver Bar.

FROM OKLAHOMA

The secretary of the Oklahoma State Bar is an extremely inquisitive individual, if the Oklahoma State Bar Journal of July correctly printed his request for information. Says the Journal: "The secretary of the State Bar is desirous of obtaining information concerning the following lawyers." Here follows a long list of missing lawyers, part of which list is captioned with the heading, "Deceased Attorneys."

The following excerpt from the July issue of the Bar Bulletin of the city of Boston makes us wonder whether or not our voluminous House Bill in the last legislature, defining the practice of law and providing a penalty for unauthorized practice, might have been subject to the same comment from our governor:

"MUCH OBLIGED, GOVERNOR!

"House Bill 1423, entitled, 'An Act Relative to the Unauthorized Practice of Law and Prohibiting Certain Acts and Practices,' having the approval of both Senate and House, was submitted, in due course, to His Excellency, the Governor.

"In his message returning the bill with recommendations that it be amended in certain specified particulars, His Excellency, with delicate irony, comments as follows:

" 'I assume that the purpose of this legislation is to keep the practice of law as a profession, to eliminate corporations as practitioners, and to protect against the competition of lay advisers. If that is its purpose, the Act as passed appears to be somewhat wide of the mark, and by inference to legalize corporate and individual participation beyond the present understanding of legitimate practice of the law.'

"A reading of the bill as passed suggests that however wide of the mark the bill may be, His Excellency's comments are not.

"Apparently the bar, having striven mightily through many years for the passage of an act eliminating corporations as practitioners and laymen as legal advisers, has produced a set of words extending corporate and lay legal activities beyond even present practice. The Bulletin believes that it can, without question, assure His Excellency that his inference that such was not the intention of the proponents is entirely justified.

"How beautifully true are the words of the poet who sang so sweetly of the region paved with good intentions."

OUR HAPPY LEGISLATORS

Mr. J. E. Robinson of the Denver Bar calls our attention to Section 3 of House Bill No. 224, entitled, In Relation to Poultry Eggs, approved by the governor on May 2, 1933, and now in force, and the following provision thereof:

"Every dealer selling direct to the consumer, and every person engaged in buying and selling eggs at wholesale, before offering for sale in Colorado such eggs shall first be candled and a certificate made thereof showing the date and name of the candler and the serial number thereof * * *."

Mr. Robinson appropriately queries: "Who is to candle the dealer, and why?"

WHERE WAS DICTAPHUN WHEN THIS HAPPENED?

Emory L. O'Connell of the Denver Bar refers to the July issue of DICTA, page 274, and the digest of a Supreme Court decision in the case of Raceland Bank, etc. vs. Pueblo Savings & Trust Company, where our reporter states: "A car of 42,000 pounds (potatoes) was shipped which upon arrival at Pueblo were decomposed and destroyed by the city health department."

Emory rises to remark that the shipper might have a good cause of action against the Pueblo health department.

RECORDS WANTED

The Indiana University School of Law, in order to complete its file of publications of the Denver Bar Association, has requested us to supply the following:

Denver Bar Association Record, volumes 1 to 5, inclusive; Dicta, Vol. 6, Nos. 7, 8, 10; Vol. 7, Nos. 1, 2, 3, 7.

If any member has these volumes and has no particular use for them, we will be glad to receive them for the Indiana University School of Law.

DENTAL NOTE

The Editor of *The Colorado Graphic* has a toothache. We hope our material never turns in on us!

To follow foolish precedents, and wink with both our eyes, is easier than to think.—*Cowper.*

Supreme Court Decisions

WATER RIGHTS—CONSTRUCTION OF ADJUDICATION DECREE—ADMINISTRATION BY WATER OFFICIALS—EXCESSIVE DIVERSION—INJUNCTION—*Hassler, et al. v. The Fountain Mutual Irrigation Company, et al.*—No. 12594—*Decided July 3, 1933*—*Opinion by Mr. Justice Bouck.*

A water adjudication decree had awarded defendants senior rights and the plaintiffs junior rights. The amount of each priority was not stated in second feet, but was based merely on the capacity of the respective ditch and the acreage it was intended to irrigate therefrom, being 100 acres for defendants and 450 for plaintiffs. In practice, the State water officials had interpreted the decree to entitle defendants to 9.84, and plaintiffs to 9.36 second feet of water, and these appear to have been the amounts used for many years. Plaintiffs seek by injunction to limit defendants' diversion to less than half what defendants have been using.

1. The Supreme Court has no right to say that there is a fatal discrepancy between the amounts of water allowed each ditch as compared to the acreages irrigated, which the trial court ought to have considered as vitiating the presumably honest judgment of a long line of water officials who have deliberately administered the decree.—*Judgment affirmed.—Mr. Justice Hilliard not participating.*

MUNICIPAL CORPORATIONS—OFFICIAL OF—INJUNCTIONS AGAINST—LEGISLATIVE INJUNCTIONS—*Denver vs. Gibson, et al.*—No. 12691—*Decided July 3, 1933*—*Opinion by Mr. Justice Hilliard.*

1. The manager of health for the City and County of Denver, claiming authorization under a city ordinance which regulates the milk business and which provides for the sale and distribution of raw milk and cream, pasteurized milk and cream, made an order requiring all milk distributed in Denver to be pasteurized. The trial court enjoined him from enforcing the order.

2. Though it is a general rule that health officers should be privileged to exercise reasonable judgment, still their acts must be legal, consistent with the source of their power and the limitations thereof. The ordinance by authority of which the manager of health sought to prevent the sale and distribution of raw cream, insisting that all milk products must be pasteurized, was an ordinance regulating the sale and distribution of raw cream and milk. Under the ordinance the plaintiffs below had obtained licenses. The effect of the order of the manager of health not only interfered with the licenses granted, but in effect nullified the ordinance. The injunction should therefore stand.—*Judgment affirmed.*

CONSTITUTIONAL LAW—WATER RIGHTS—INTERSTATE COMPACTS FOR ROTATION OF WATERS—OBLIGATION OF CONTRACTS—DUE PROCESS OF LAW—*The La Plata River and Cherry Creek Ditch Company v. Hinderlider, et al.*—No. 12796—*Decided July 3, 1933*—*Opinion by Mr. Justice Burke.*.

In an action against the State water officials, plaintiff unsuccessfully sought a mandatory injunction to compel defendants to permit it to divert water from the La Plata River, when water was in the stream available for its priority. Defendants set up, as a defense, the La Plata River Compact, entered into between the States of Colorado and New Mexico, and ratified by the legislatures of both states and by the Congress of the United States. Under said compact the waters of said river are rotated to meet, as nearly as possible, the rights and needs of appropriators in both states. Such system of rotation interferes with plaintiff's use of its decreed appropriation.

1. No state has power to enter into a compact which violates federal or state constitutions.

2. Plaintiff holds its water decree, and demands water thereunder, pursuant to statutes passed under the provisions of Secs. 5 and 6, Art. 16 ,Colorado constitution. These together rise to the dignity of a contract, the impairment of the obligation of which is prohibited by federal and state constitutions.

3. A decreed water priority is a property right and a freehold, of which its owner may not be deprived without due process of law. An interstate compact is not such due process.—*Judgment reversed and cause remanded—Mr. Justice Butler dissents; Mr. Justice Campbell not participating.*

WORKMEN'S COMPENSATION—COMMON LAW WIDOW—WHAT CONSTITUTES—*Clayton Coal Co., et al. vs. The Industrial Commission*—No. 13291—*Decided July 3, 1933*—*Opinion by Mr. Justice Butler.*

1. Claim was made before the Commission by Mary Tsikiris as the widow of Mike Tsikiris. It is admitted by the defendants below that if the claimant can establish the fact that she was the wife of Tsikiris at the time of his death, she is entitled to compensation. It is admitted that there was no ceremonial marriage, but it was contended that the evidence was insufficient to support the findings of the Commission that there was a common law marriage. The evidence by several witnesses was to the effect that the claimant had lived with Tsikiris for four or five years before his death; that they had lived together as husband and wife; that Mike introduced her as his wife; referred to her as his wife; that everyone thought they were husband and wife; that she bought supplies at the stores and charged them to him; that on Mike's deathbed he told several witnesses that he wanted his wife to have all his property, including his car and some money in the bank.

2. Mary testified that she and Mike lived together as husband and wife, but that they had not been married, although they had always intended to get married.

3. If the statement of the claimant to the effect that they "always intended to get married but did not" stood alone, the finding that she and Mike were husband and wife could not be sustained. However, when considered with all the testimony, it is apparent that she had reference to a formal ceremony. The conduct of the parties was consistent with the marriage and inconsistent with any relationship other than that of marriage.—*Judgment is affirmed.*

GARNISHMENT — ASSIGNMENT BEFORE GARNISHMENT — NECESSITY OF NOTICE — DEMURRER — NECESSITY OF DISPOSING OF — *Denver Joint Stock Land Bank of Denver vs. Anna M. Moore*—No. 13294—*Decided July 3, 1933*—*Opinion by Mr. Justice Bouck.*

This case arises out of conflicting claims asserted against funds held by garnishee. The latter is a sugar-beet company, which purchased sugar-beet crops from two separate tenant farmers who happened to have leased from the same landlord. The moneys involved are the landlord's share. Prior to garnishment the landlord assigned his interest to the bank, which assignment was not recorded, and the judgment creditor who garnisheed had no notice thereof. The assignee bank filed its petition in intervention, the judgment creditor filed answer thereto and the bank demurred. The court declined to hear argument on demurrer, and on trial dismissed the petition in intervention for want of equity, and judgment was entered against the garnishee in favor of the judgment creditor.

1. A garnishment can reach only such property as belongs to judgment debtor, who, in this instance, was the landlord.

2. The allegations of the petition in intervention are sufficient to make out a prima facie case for the intervening assignee, the bank.

3. It was not necessary that the assignment from the landlord to the bank be recorded.

4. Neither is it essential that notice of assignment should be given in advance to a garnishee, although in the absence of knowledge or notice, a garnishee would be protected against double payment if in pursuance of court orders he should pay under the garnishment in ignorance of the assignment.

5. If, during the pendency of the garnishment proceedings, it is proved that an assignment antedating the garnishment was executed, the absence of previous notice to the garnishee is immaterial.

6. A judgment creditor is not entitled to notice as such.

7. It is not proper for the trial court to refuse to permit argument on a pending demurrer. The proper practice is to dispose of pending demurrers before entering upon the main trial; and when attorneys express a desire to argue the law or the facts on a demurrer, it is well for the judicial patience to accede to the request.—*Judgment reversed.*

BUILDING AND LOAN ASSOCIATIONS—INSOLVENCY—RECEIVERSHIP —RIGHTS AND DUTIES OF SHAREHOLDERS ON CONTRIBUTIONS —*McPherson vs. The Railway Savings and Building Association* —No. 13282—*Decided July 8, 1933*—*Opinion by Mr. Justice Butler.*

McPherson brought this suit as a test case against the association in equity to compel it to recognize its capital liability to shareholder in the sum of $7,811.93 on stock held by plaintiffs and to restrain the association from charging against such capital account of the plaintiffs any part of the money paid to them in maturing other shares formerly owned by plaintiffs. The association filed answer alleging that shareholders were never credited with earnings to which they were entitled and that the association merely showed a book liability to each shareholder for the amount paid in by each, and that instead of maturing stock as required by its by-laws, it appropriated the earning that belonged to other shareholders and used the funds to arbitrarily mature stock on dates which by-laws estimated it would be matured, whether matured in fact or not; that at no time within past five years did the capital paid in by any shareholder, plus his pro-rata share of profits, equal the face value or matured value thereof; that all stock matured during said 5-year period was matured by improperly paying out a part of the capital paid in by other shareholders and earnings that should belong to other shareholders and that such unauthorized payments exceeded the sum of $500,000.

A demurrer was filed to this answer and sustained and plaintiffs stood upon the demurrer.

Decree entered that capital liability of the association to each of its shareholders is the amount paid in by each plus his proportionate share of earnings that should have been credited to his stock but was improperly paid to other shareholders, minus so much of the so-called dividends received as were in fact withdrawals of capital.

1. The decree was correctly entered and the court properly overruled the demurrer to the answer.

2. In a building and loan association all shareholders must fare alike; one shareholder cannot profit at the expense of another.

3. Stock matures when the amount paid in by a shareholder plus his share of the earnings equals the par value of the stock. The payment to a shareholder of the par value otherwise than as above is unwarranted.—*Judgment affirmed.*

TOO MUCH HUIE

Fannie Huie sued Soo Hoo when he (Hoo) held her handsome hack for his alleged lien for storage. Fannie finally finished in front. In deciding the appeal (22 Pac. 2nd, 808) the learned court referred to a similar incident in State vs. Shevlin, 23 Mo. App. 598, involving a horse, thus proving Ed Wynn was right after all.

SALES — FRAUD — MISREPRESENTATIONS — OF LAW — *Metzger vs. Baker*—No. 12823—*Decided August 2, 1933*—*Opinion by Mr. Justice Burke.*

Plaintiffs in error were plaintiffs below. They bought a Denver drug store for $10,000.00 and brought this action for $5,000.00 damages for false representations that defendants had represented that a city zoning ordinance zoned the district in which the store was located as residential and prevented the establishment therein of another drug store or the erection of additional business block, whereas there was no such ordinance and shortly after the purchase, another drug store was opened within a block and damages were suffered thereby. Plaintiffs were nonsuited.

1. Whether there was an ordinance on this subject and if so, what it permits or forbids, was a question of law and the general rule is that a misrepresentation of law is a mere expression of opinion, impotent to avoid a contract or support an action for damages.

2. This rule is subject to certain exceptions such as special knowledge possessed by one and not available to the other; a fiduciary relationship; representations as to the law of a foreign state; but none of these exceptions is applicable here.—*Judgment affirmed.*

EXECUTORS AND ADMINISTRATORS—RIGHT TO ADMINISTRATION—DISCRETION OF COURT—*In the Matter of the Estate of Thomas F. Woody, Deceased, vs. Woody*—No. 12869—*Decided August 2, 1933*—*Opinion by Mr. Justice Burke.*

Plaintiff in error was plaintiff below. He was a grand-nephew of deceased and upon his petition as next of kin was appointed administrator. Defendant, who was a nephew and moved to vacate the appointment on the ground he was more closely related, and order was vacated and defendant appointed administrator. On appeal to the District Court defendant had judgment.

1. Plaintiff complained that the order vacating his appointment by County Court was without notice. This point is not material now as there was a trial de novo in the District Court. The appearance of counsel in District Court was general and this waived such objection. Moreover, their motion was in the nature of a motion to quash a summons or its service. Such motion, when overruled, constitutes a general appearance.

2. In granting administration where there is no husband or widow the right goes to the next of kin. It is not necessary to decide whether this means those most nearly related to deceased or those entitled to take under the statute of descent and distribution. The court was vested with discretion and had full power as between "next of kin" to decide which next of kin was entitled to be appointed.—*Judgment affirmed.*

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